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Dakota voted to allow the possession, use, and retail sale of marijuana. Once retail stores in these states are up and running, tax from sales of cannabis and cannabis products ...

Gail Cole • Nov. 16, 2020



On November 3, 2020, residents of Arizona, Montana, New Jersey, and South Dakota voted to allow the possession, use, and retail sale of marijuana. Once retail stores in

these states are up and running, tax from sales of cannabis and cannabis products

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Retail sales of marijuana products will be subject to existing state and local transaction privilege tax (TPT), plus an additional 16% tax. Local governments have the authority to ban marijuana facilities and testing centers, and have local control over licensing, regulation, and zoning.

Montana

More than 56% of Montanans voted in favor of Initiative 190, which makes it legal for adults in Montana to possess and use up to one ounce of marijuana or eight grams of marijuana concentrate as of January 1, 2021. Adults may also grow up to four marijuana plants for personal use in their residence.

Retail sales of marijuana will follow. The Montana Department of Revenue will start accepting marijuana provider and dispensary applications by January 1, 2022. Once permitted, retail sales will be subject to a 20% tax of the retail price.

New Jersey

More than 66% of voters in New Jersey voted in favor of Public Question 1, which amends the state constitution to legalize the retail sale and use of cannabis products by adults age 21 and over. The constitutional amendment takes effect January 1, 2021.

All retail sales of cannabis products will be subject to the New Jersey state sales tax (6.625%). The state legislature may authorize municipalities to levy an additional 2% local tax on these products, though local taxes would have to be approved by local ordinance.

South Dakota

Constitutional Amendment A was approved by more than 53% of South Dakota voters on November 3. It legalizes recreational use of marijuana by adults and allows

individuals to possess or distribute up to one ounce of marijuana starting July 1, 2021.

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guidelines.

South Dakotans also approved Initiated Measure 26, by a considerably larger margin. It establishes a medical marijuana program for individuals with debilitating medical conditions. They're allowed to possess three ounces of marijuana, additional amounts of marijuana products, and plants.

The South Dakota Department of Revenue will be responsible for licensing and regulating the cultivation, manufacturing, testing, transport, delivery, and sale of marijuana. It has until April 1, 2022 to set regulations and being accepting applications for establishments.

Pass the blunt

Recreational marijuana is already legal in Alaska, California, Colorado, Illinois, Maine, Massachusetts, Michigan, Nevada, Oregon, Vermont, Washington, and Washington, D.C. Medical marijuana has been legalized in even more states, most recently Mississippi, where residents voted to allow medical marijuana on November 3, 2020.

Connecticut, New York, and Rhode Island are taking a different path to legalization, via legislatures. New York may legalize recreational marijuana as soon as 2021, according to Governor Andrew Cuomo's top marijuana advisor, Axel Bernabe.

There's even talk of legalizing recreational marijuana at the federal level, though that's much more of a long shot. Canopy Growth CEO David Klein has optimistically predicted the federal government will legalize cannabis in 2022. Cannabis investor Matt Hawkins was more measured, but he noted that multiple states included dispensaries on their lists of essential businesses during the COVID-19 lockdown and said the cannabis industry could provide a much-needed source of tax revenue.

Indeed, according to the Tax Foundation, "from a pure tax policy perspective, there is

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Federal legalization would make it easier for cannabis businesses to bank and remit taxes; many banks do serve marijuana businesses, but they risk incurring federal punishment in doing so. It would also allow businesses to sell marijuana online, both in-state and in other states.

Congress has considered a couple of bills that would increase marijuana businesses' access to basic banking services, including H.R.1595, the Secure and Fair Enforcement Banking Act of 2019 and H.R.6800, the Heroes Act, passed by the House in May 2020. Such bills would allow banks to serve the legal cannabis industry without interference and be "a major stepping-stone toward legitimacy prior to full legalization," says Scott Peterson, vice president of government relations at Avalara.

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Gail Cole is a Senior Writer at Avalara. She's on a mission to uncover unusual tax facts and make complex laws and legislation more digestible for accounting and business professionals.

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